MAHAMAD TAIB v. PIHAK BERKUASA KEMAJUAN PEKEBUN KECIL & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
WAN AHMAD FARID SALLEH JC
[CIVIL APPEAL NO: WA-12BNCVC-113-09-2017]
18 APRIL 2018

CIVIL PROCEDURE: *Pleadings – Facts not pleaded – Claim for damages for alleged misrepresentation – Bidder successful in auction for land – Bidder under impression that there was bungalow on land only to discover later that there was no such bungalow – Whether special damages claimed for and negligence of parties specifically pleaded in statement of claim – Whether claim ought to be considered by court*

CONTRACT: *Misrepresentation – Auction of land – Bidder successful in auction for land – Bidder under impression that there was bungalow on land only to discover later that there was no such bungalow – Whether there was misrepresentation in proclamation of sale in public auction – Whether auctioneer negligent in ensuring accuracy of proclamation of sale – Whether bidder took sufficient measures to ensure details in proclamation of sale accurate – Whether there was delay in commencing action – Whether bidder entitled to compensation – Contracts Act 1950, s. 18*

The first respondent ('the first defendant') had auctioned off a piece of land charged to it, as a security for a loan, after the chargor of the said land defaulted in the repayment of the said loan. The public auction was carried out by the second respondent ('the second defendant') and the appellant ('the plaintiff') was successful in his bid. According to the plaintiff, in the proclamation of sale ('POS') for the auction, the second defendant stated that there was a bungalow erected on the land. However there was no such bungalow on the land, prompting the plaintiff to claim for damages against the defendants, at the Sessions Court, for the alleged misrepresentation in the POS. The plaintiff testified that (i) he had contacted the court-appointed auctioneer who confirmed the existence of the bungalow on the land; and (ii) he saw the bungalow when he visited the land only to discover later, after surveying works, that the bungalow was actually situated in the neighbouring lot and not the land. The plaintiff's witness, an architect ('SP2'), further testified that the costs required to construct a house similar to the plan, as reflected in the POS, was RM383,324. In defence, the defendants argued that, *inter alia*, (i) they could not possibly be liable as, the valuation report for the auctioning of the land was prepared by the Valuation and Property Services Department Chukai Branch, Terengganu ('VPSD'); (ii) cl. 3 of the POS provided that the potential bidders, should ensure that the details in the POS were accurate; (iii) cl. 8 of the POS provided that the description of the land shall be deemed to be accurate and any form of misrepresentation could not be construed to have affected the legality of the sale and no compensation

would be made to the successful bidder; and (vi) the plaintiff was guilty of laches as he took five years before commencing proceedings for the damages. Dismissing the plaintiff's claim, the Sessions Court held that (i) there was no misrepresentation in respect of the auction; (ii) the plaintiff did not do enough to the extent that he got confused between the land and the neighbouring lot; and (iii) the plaintiff was not entitled to any compensation. Hence, the present appeal. The plaintiff submitted that (i) s. 18 of the Contracts Act 1950 ('the Act'), which defines misrepresentation, includes a positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (ii) a misrepresentation is a false statement made by one party to the contract, to the other, before, or at the time of contracting, on which that other party relied on in contracting; and (iii) had the second defendant affixed a copy of the notice of auction on the land, the plaintiff would have known that there was no such bungalow on the land upon visiting the same prior to placing his bid at the auction.

Held (dismissing appeal; affirming decision of Sessions Court):

(1) The plaintiff paid a deposit of 10% prior to the auction, pursuant to the memorandum of sale, on 15 August 2011. He paid the remaining 90% on 17 October 2011, a little two months later. The plaintiff had the benefit of two months, from the date of the memorandum of sale, to check the details of the land before making the remaining payment of 90%. He made the payment of the remaining 90% before making further enquiries. It was too late in the day for the plaintiff to complain that there was a misrepresentation after he made the payment of the balance of 90%. The plaintiff's failure to do so would have surely prejudiced the defendants. It took the plaintiff one year, from the date of the auction, to formally write to complain that there was no such bungalow on the land. Furthermore, it took the plaintiff more than three and a half years to file the suit at the Sessions Court. (paras 38-40 & 43)

(2) While there was no denying that the description in the valuation report was erroneous and the same report was used by the second defendant in preparing the POS, it would only be proper for the plaintiff to make the Director-General of the VPSD as a party to the suit at the Sessions Court. The VPSD was not an agent of the first defendant. (para 41)

(3) The issue of special damages was disposed of and dismissed. Special damages must be specifically pleaded before it could even be considered by the court. There was nothing in the plaintiff's amended statement of claim that detailed the special damages for, *inter alia*, the construction costs of a similar bungalow. In addition to that, the particulars of the negligence of the second defendant, in failing to affix the notice of auction on the land, were not pleaded either. Not a single word of

'negligence' appeared in the plaintiff's amended statement of claim. The claim against the defendants was purely and squarely premised on misrepresentation and not negligence. (paras 33-35)

Case(s) referred to:

Abdul Razak Datuk Abu Samah v. Shah Alam Properties Sdn Bhd & Another Appeal [1999] 3 CLJ 231 CA ***(refd)***

CIMB Bank Bhd v. Leong Poh Sem [2014] 1 LNS 607 HC ***(refd)***

David Wong Hon Leong v. Noorazman Adnan [1995] 4 CLJ 155 CA ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2015] 2 CLJ 453 FC ***(refd)***

Gemakota Enterprise Sdn Bhd v. Public Bank Bhd [1998] 4 CLJ Supp 476 HC ***(dist)***

Iftikar Ahmed Khan v. Perwira Affin Bank Bhd [2018] 1 CLJ 415 FC ***(refd)***

Ong Ah Long v. Dr S Underwood [1983] 2 CLJ 198; [1983] CLJ (Rep) 300 ***(foll)***

Pal Associates Sdn Bhd v. The Syndicate of the Press of the University of Cambridge being authorised by the Chancellor Masters and Scholars of the University of Cambridge [2013] 1 LNS 398 HC ***(refd)***

Sim Thong Realty Sdn Bhd v. Teh Kim Dar [2003] 3 CLJ 227 CA ***(refd)***

Small Medium Enterprise Development Bank Malaysia v. Lim Woon Katt [2016] 9 CLJ 73 CA ***(refd)***

Travelsight (M) Sdn Bhd & Anor v. Atlas Corporation Sdn Bhd [2003] 6 CLJ 344 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 18

For the appellant - Vignesh Kumar; M/s Balendran Chong
For the 1st respondent - Muhamad Fakhri Suhaimi; M/s Shafik Sallehuddin & Kamal
For the 2nd respondent - Najmi Dawami; M/s Azman, Wan Helmi & Assocs

[Editor's note: Appeal from Sessions Court; Summons No: WA-A52NCVC-25-01-2017.]

Reported by Najib Tamby

JUDGMENT

Wan Ahmad Farid Salleh JC:

[1] This is an appeal which emanates from the decision of the learned Sessions Court Judge ("SCJ") dated 29 August 2017 in dismissing the appellant's claim after a full trial.

[2] For convenience, parties will be referred to as they were at the Sessions Court.

The Factual Matrix

[3] The first defendant, the Rubber Industry Smallholders Development Authority, was the chargee in respect of a land known as GM 340 Lot No. 1315, Mukim Chukai, Kemaman ("the said land"). The said land was charged by one Zubaidah bt M Dasa ("the said chargor"), in favour of the first defendant in order to secure a loan ("the said loan").

[4] The second defendant is a licensed auctioneer's firm based in Kuala Terengganu.

[5] The said chargor defaulted in the said loan resulting in the said land being auctioned off by the first defendant after having an order of sale from the Kuala Terengganu High Court ("KT High Court"). A public auction was held on 15 August 2011 at the KT High Court which was conducted by the second defendant through one Wan Mohamad Fauzi bin Wan Mohamad Noor ("Fauzi"), as the court-appointed auctioneer.

[6] The plaintiff had successfully bid at the auction at the price of RM102,600 ("auction price"). Subsequently, a memorandum of sale was executed by Fauzi in his capacity as the auctioneer, plaintiff as the successful bidder and the Senior Assistant Registrar ("SAR") of the KT High Court.

[7] The plaintiff had made full payment in respect of the auction price and the said land was eventually registered into the plaintiff's name.

[8] It is the plaintiff's case that in the proclamation of sale, the second defendant had stated that there was one unit single-storey bungalow erected in the said land with the following description:

> Hartanah ini berbentuk empat segi dengan keluasan tanah ialah 42,894 kaki pesegi. Akomodasi bangunan ialah tempat letak kereta, ruang tamu, ruang makan, teres, dapur, bilik air/tandas, stor, bilik tidur utama dengan bilik air/ tandas dan dua (2) bilik tidur. Keadaan bangunan adalah usang dan tidak didiami dengan keadaan semak samun. Kemasan lantai adalah simen, mozek dan terrazo. Keluasan lantai bangunan ialah 133.78 meter persegi.

[9] The claim against the defendants at first instance was for the misrepresentation in the proclamation of sale in that there was no single-storey bungalow situated in the said land at all. The plaintiff contended that if at all there was any bungalow, the said bungalow was in fact situated in a neighbouring land which was in Lot 1316.

[10] The plaintiff, therefore, sought for damages in respect of the said misrepresentation.

The Pleadings

[11] At the Sessions Court, the first defendant's defence was that it could not possibly be held liable since the related valuation report in respect of the said land was prepared by the Valuation and Property Services Department, Chukai Branch, Terengganu ("Valuation Department") for the purpose of the said public auction. The first defendant further contended that it was not in any way involved in the preparation of the proclamation of sale and therefore could not be faulted for any misrepresentation, if any, of the same.

[12] The first defendant relied on two distinct clauses of the proclamation of sale. Clause 3 provides that the potential bidders at the auction should have himself ensured that the details stated in the proclamation of sale were accurate. Clause 18 of the same provides that the description of the said land shall be deemed to be accurate and any form of misrepresentation could not be construed to have affected the legality of the sale and that no compensation would be made to the successful bidder.

[13] The second defendant made the same line of averments in its defence. It further said that the memorandum of sale executed by the parties therein was not a contract of sale and purchase but only an acknowledgment of receipt of the payment of RM10,260 being 10% of the auction price.

[14] Further, the second defendant also contended that the plaintiff was guilty of laches in that it took more than five years before the plaintiff commenced proceedings for the purported damages at the Sessions Court.

The Trial

[15] At the trial, the plaintiff had testified that he had contacted Fauzi to enquire about the said land and was told that the bungalow unit was indeed in the said land as described in the proclamation of sale. According to the plaintiff, he went to visit the said land and could see the said bungalow unit and took some photos of the same.

[16] After the conclusion of the sale, the plaintiff had engaged one Juruukur Putra, a surveying firm to identify the boundaries of the said land for the purpose of erecting the fence surrounding the same. It was at this stage that the plaintiff came to realise that the said bungalow was situated in the neighbouring Lot 1316 and not the said land.

[17] SP2, Encik Mohammad Suhaibul ("Suhaibul"), an architect, testified that the costs required to construct a house similar to the plan as reflected in the proclamation of sale was RM383,324.

[18] The first defendant had called SD1-1, Encik Azmi bin Omar and SD1-2, Encik Zailani bin Ahmad, to testify. SD1-1 was at the material time, the chief finance officer of Permodalan Risda Berhad ("PRB"). PRB is a subsidiary of the first defendant. SD1-1 confirmed the averments of the first defendant in its pleadings that the first defendant was not in any way involved in the preparation of the valuation report and proclamation of sale. He also confirmed that neither the first defendant nor PRB was contacted by the plaintiff before the auction date.

[19] SD1-2, was the then head of financial division of PRB and he testified that upon the inquiry made by the plaintiff, he issued a letter dated 13 June 2013 ("the said letter") to the plaintiff the contents of which *inter alia* are as follows:

> [2] Setelah berbincang dengan peguam yang dilantik oleh PRB Tetuan Asmadi, Azmi & Associates, segala proses berhubung dengan tanah ini adalah sah dan telah selesai.

A [3] Sedemikian, pihak tuan diminta untuk menghubungi peguam yang mewakili tuan bagi tindakan selanjutnya.

In his testimony, SD1-2 confirmed that the first defendant did not receive any reply from the plaintiff in respect of the said letter. Messrs Asmadi, Azmi & Associates ("the said solicitors") was the firm of solicitors acting for
B PRB.

[20] SD2-1, Fauzi, was the sole proprietor of the second defendant. He confirmed that he prepared the proclamation of sale dated 15 August 2011 based on the valuation report made by the Valuation Department. It is therefore incumbent according to SD2-1 for the plaintiff to ensure the
C accuracy of the description of the said land before even contemplating of making any bidding in respect of the auction.

The Findings Of The Learned SCJ

[21] The learned SCJ referred to the note of the proclamation of sale which
D provides as follows:

> Kesemua penawar yang berminat adalah dinasihati untuk membuat carian rasmi terhadap hakmilik tanah di Pejabat Tanah berkenaan, memeriksa Hartanah tersebut dan membuat apa-apa pertanyaan kepada pihak berkenaan Hartanah tersebut.

E The learned SCJ took cognisance of the testimony of the plaintiff that he had undertaken every reasonable effort before proceeding with bidding at the auction.

[22] However, the learned SCJ made a further finding that the plaintiff did
F not do enough to the extent that the plaintiff himself got confused between the said land and the neighbouring Lot 1316. By making a cross-reference to cls. 3 and 18, the learned SCJ held that the plaintiff as a successful bidder must have agreed that:

(i) No form of misrepresentation in the proclamation of sale would nullify
G the sale at the auction;

(ii) He was presumed to have taken steps that in ensuring that the details stated in the proclamation of sale were correct; and

(iii) There would be no compensation to be made to the successful bidder in the event of any wrongful description of the said land.
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[23] In the circumstances, the learned SCJ further held that there was no misrepresentation in respect of the said auction. Reference was made to the case of *CIMB Bank Berhad v. Leong Poh Sem* [2014] 1 LNS 607 which held that there was no privity of contract between the chargee bank and the
I successful bidder.

[24] Since there was no misrepresentation made, the learned SCJ further held that the plaintiff was therefore not entitled to compensation.

[25] The learned SCJ, which I presume for completeness sake, also held in the event that she was wrong in her aforesaid conclusion, the alleged misrepresentation was made innocently devoid of any fraud or negligence. She then cited the case of *Sim Thong Realty Sdn Bhd v. Teh Kim Dar* [2003] 3 CLJ 227; [2003] 3 MLJ 460 CA, where the Court of Appeal held that a representee who has been induced by an innocent representation may sue for rescission and consequent restitution, but he may not recover damages. Reference was also made to another Court of Appeal case of *Abdul Razak Datuk Samah v. Shah Alam Properties Sdn Bhd & Another Appeal* [1999] 3 CLJ 231 CA which highlighted the same proposition of law.

[26] At best, according to the learned SCJ, the plaintiff was only entitled to rescission of the contract and the refund of the deposit. In *Gemakota Enterprise Sdn Bhd v. Public Bank Bhd* [1998] 4 CLJ Supp 476 under such a situation, a successful bidder is only entitled to rescind the contract and for the refund of the RM42,800 deposit that it paid.

[27] On the evidence given by SP2, Suhaibul, for the costs of RM383,324 required to construct a similar bungalow as described in the proclamation of sale, the learned SCJ rejected the same on the ground that SP2 did not visit Lot 1316 before preparing the estimated costs.

[28] The learned SCJ then, on the balance of probabilities, dismissed the plaintiff's claim against both of the defendants. Aggrieved by the finding, the plaintiff appealed.

The Appeal

[29] Before me, learned counsel for the plaintiff referred me to s. 18 of the Contracts Act 1950 which defines misrepresentation so as to include a positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

[30] Learned counsel then attracted my attention to *Gemakota Enterprise* where RK Nathan J held that:

> However, there was a clear breach of duty on the part of the bank in failing to ensure that the correct facts were represented in the proclamation of sale. Prospective bidders would rely heavily on the description of the land as stated in the proclamation of sale. It is my judgment that any representation that induces a bidder to successfully bid at the auction and thus to enter into a contract, is found to be untrue, and in the bidder's view such a representation was a material factor that induced him to enter into the contract, then pursuant to s. 19 of the Act, such an agreement is voidable at the bidder's option.

Learned counsel for the plaintiff then submitted that a misrepresentation is a false statement made by one party to the contract to the other, before, or at the time of, contracting, on which that other party relied in contracting; see *Travelsight (M) Sdn Bhd & Anor v. Atlas Corporation Sdn Bhdd* [2003] 6 CLJ 344; [2003] 6 MLJ 658.

[31] On the damages, learned counsel for the plaintiff submitted that the first defendant should be held liable for damages since the first defendant was the principal where the said solicitors and valuer from the Valuation Department were its agents.

[32] As to the second defendant, the plaintiff questioned whether the second defendant had fulfilled its duty as an auctioneer by affixing a copy of the notice of auction in a conspicuous position on the said land. It is the plaintiff's contention that had the second defendant affixed the same on the said land, the plaintiff would have known there was no such bungalow on the said land upon visiting the same prior to placing his bid at the auction.

The Analysis

[33] At the outset, I will dispose of the issue of special damages as per the evidence by SP2, the architect. It is trite that special damages must be specifically pleaded before it can even be considered by the court. I can only refer to the case of *Pal Associates Sdn Bhd v. The Syndicate of the Press of the University of Cambridge being authorised by the Chancellor Masters and Scholars of the University of Cambridge* [2013] 1 LNS 398; [2014] 10 MLJ 728 where Asmabi Mohamad JC (later JCA) expressed the proposition of law succinctly as follows:

> Further the plaintiff's pleadings were not carefully drafted, in that, there was omission on the part of the plaintiff to specifically plead for special damages to be awarded by the court giving the particulars of these special damages. The plaintiff could not cover the defects in its pleadings by way of affidavit evidence. It is trite that the plaintiff who is claiming for special damages must specifically plead and provide the particulars of the same in his pleadings. In *Ilkiw v. Samuels & Ors* [1963] 1 WLR 991; [1963] 2 All ER 879 Diplock LJ said '... In my view, it is plain law – so plain that there appears to be no direct authority because everyone has accepted it being the law for the last hundred years – that one can recover in an action only special damage which has been pleaded, and, of course proved'.

Reference was also made to the Federal Court case of *Ong Ah Long v. Dr S Underwood* [1983] 2 CLJ 198; [1983] CLJ (Rep) 300; [1983] 2 MLJ 324 FC where it was held that it is a well-established principle that special damages in contrast to general damages, have to be specifically pleaded and proved.

[34] I have gone through the amended statement of claim and could not find anything therein that detailed the special damages for the construction costs of a similar bungalow for RM383,324, the architect's costs for RM2,120, the land surveyor's costs for RM4,028 or the clearance costs for the said land allegedly incurred by the plaintiff for RM2,450. Since they were not pleaded, on the authority of *Ong Ah Long* alone the claim for special damages in respect of the appeal is hereby dismissed.

[35] While we are on the subject matter of pleadings, the particulars of the negligence of the second defendant were not pleaded either. If the plaintiff contended that the second defendant was negligent in its failure to affix the notice of auction on the said land as alleged then such particulars must be pleaded in the amended statement of claim. Not a single word of "negligence" appeared in the amended statement of claim. The claim against the defendants was purely and squarely premised on misrepresentation and not on negligence.

[36] In the recent case of *Iftikar Ahmed Khan v. Perwira Affin Bank Bhd* [2018] 1 CLJ 415; [2018] 2 MLJ 292 FC, the Federal Court, in reaffirming the judgment of the Court of Appeal held that if the pleaded case of the plaintiff was premised on tort, he could not later change it to contract. In my opinion, the reverse is equally true. A decision based on an issue which was not raised by the parties in their pleadings was liable to be set aside. In delivering the judgment of the apex court, Abu Samah Nordin FCJ held as follows:

> It is settled law that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded: *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 6 MLJ 1, *State Government of Perak v. Muniandy* [1986] 1 MLJ 490, *Veronica Lee Ha Ling & Ors v. Maxisegar Sdn Bhd* [2009] 6 CLJ 232; [2011] 2 MLJ 141. In *Lee Ah Chor v. Southern Bank Bhd* [1991] 1 CLJ Rep 239; [1991] 1 MLJ 428 it was held that where a vital issue was not raised in the pleadings, it could not be allowed to be granted and to succeed on appeal. A decision based on an issue which was not raised by the parties in their pleadings is liable to be set aside: *Yew Wan Leong v. Lai Kok Chye* [1990] 2 MLJ 152. In *The Chartered Bank v. Yong Chan* [1974] 1 MLJ 157 the Federal Court set aside the judgment of the trial judge as it was decided on an issue not raised on the pleadings. In that case the trial judge erred in concluding that the pleadings included a claim for breach of contract as well as a claim for libel.

[37] On the issue of misrepresentation, learned counsel for the plaintiff relied heavily on the case *Gemakota Enterprise* and submitted that there was a clear breach of duty on the part of the first plaintiff in failing to ensure that the correct facts were represented in the proclamation of sale. In the aforesaid case, the property was misdescribed on two grounds: (1) its terrain; and (2) its area. It should be borne in mind that the plaintiff, who was the successful bidder in the aforesaid case, realising that it had not purchased what it had bargained for, wrote a letter to the defendant bank protesting at the misdescription of the said property and conveying its intention of aborting the purchase. It also sought a refund of the said deposit. The court then ordered for the deposit to be refunded to the plaintiff.

[38] In the instant appeal, the plaintiff paid a deposit of 10% prior to the auction pursuant to the memorandum of sale on 15 August 2011. He paid the remaining 90% on 17 October 2011, a little than two months later. In short,

A the plaintiff had the benefit of two months from the date of the memorandum of sale to check the details of the said land before making the remaining payment of 90%.

[39] In *Gemakota Enterprise* the successful bidder was prudent enough to make an enquiry with the defendant bank before it parted with the remaining
B 90% of the auction price. In the instant appeal, the plaintiff made the payment of the remaining 90% before making further enquiries. In my opinion, it is too late in the day for the plaintiff to do so. *Gemakota Enterprise* is therefore distinguished.

C **[40]** In the instant appeal, it took the plaintiff one year from the date of the auction to formally write to the said solicitors to complain that there was no such bungalow on the said land. Further, upon being informed by PRB pursuant to the letter dated 13 June 2013, there was evidence to the effect that the plaintiff did not respond to this letter. This was confirmed by SD1-2. If indeed the plaintiff was not happy with the said letter dated 13 June
D 2013, I would only expect a prompt and vigorous denial from the plaintiff; see *David Wong Hon Leong v. Noorazman Adnan* [1995] 4 CLJ 155; [1995] 3 MLJ 283 CA. That, unfortunately, did not happen. It took the plaintiff more than 3½ years to file in the suit at the Sessions Court. In my opinion, failure to respond while not amounting to an admission, would surely go to
E the conduct of the plaintiff. Conduct is a relevant fact for the court to take into account to give the relevant probative force to the version of the plaintiff and/or defendant's case; see *Small Medium Enterprise Development Bank Malaysia v. Lim Woon Katt* [2016] 9 CLJ 73; [2016] 5 MLJ 220 CA.

F **[41]** While there is no denying that the description in the valuation report was erroneous and that the same report was used by the second defendant in preparing the proclamation of sale, it would only be proper for the plaintiff to make the Director General of the Valuation Department as a party in the suit at the Sessions Court. I am not prepared, based purely on the record of appeal, to conclude that the Valuation Department is an agent of the first
G defendant.

[42] As a potential bidder, the plaintiff should have been more prudent in participating in the said auction. After having paid the deposit and executed the memorandum of sale, the plaintiff had 120 days before paying the remaining 90% to double check the accuracy of the details provided for in
H the proclamation of sale. By his own admission in para. 13 of the statement of claim, he only made the checking and came to realise about the non-existence of the bungalow in early 2007. In any event, it is not as if the description of the bungalow in the proclamation of sale was a palatial one. It made it clear that the bungalow was abandoned and surrounded by shrubs.

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[43] As aforesaid, the plaintiff should have been more prudent and should have made the enquiry well before making the balance of the said 90% of the auction price. The plaintiff's failure would have surely prejudiced the defendants. It is a little bit too late in the day for the plaintiff to complain that there was a misrepresentation after he made the payment of the balance of 90%. It is this that sets that facts of the instant appeal apart from *Gemakota Enterprise*.

Conclusion

[44] I, therefore, agree with the finding of the learned SCJ that there was no misrepresentation on the part of the defendants. There was no insufficient judicial appreciation that would warrant an appellate intervention in what the Federal Court in *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2015] 2 CLJ 453 FC termed as the "plainly wrong test" principle. I am also of the opinion that the learned SCJ in arriving at her decision on an issue of fact had correctly assessed and weighed the evidence before her. She was also correct in addressing the points of law raised by the parties.

[45] In the result, after having read the appeal record and the submissions of parties herein, the appeal is therefore dismissed with costs of RM5,000 to each defendant subject to allocatur. The decision of the learned SCJ is hereby affirmed.